

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY *cg* D.C.

05 MAY -9 AM 8:34  
ROBERT H. DITOLIO  
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W.D. OF TN, MEMPHIS

EARNESTINE W. BUTLER, )  
 )  
Plaintiff, )  
 )  
v. ) No. 04-2006 M1/P  
 )  
ADAM'S MARK HOTEL, et al., )  
 )  
Defendants. )

ORDER DENYING DEFENDANT SEVENTEEN HB MEMPHIS CORPORATION'S MOTION  
TO DISMISS FOR FAILURE TO PROSECUTE, OR, IN THE ALTERNATIVE, TO  
COMPEL PLAINTIFF'S DEPOSITION

Before the Court is the Motion to Dismiss for Failure to Prosecute, or, in the Alternative, to Compel Plaintiff's Deposition of Defendant Seventeen HB Memphis Corporation, filed April 1, 2005. Plaintiff responded in opposition on April 5, 2005.

When evaluating a motion to dismiss for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b), a district court is guided by the following four factors:

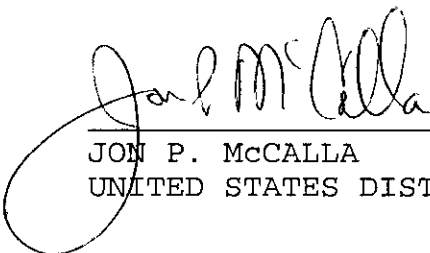
(1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Knoll v. American Tel. & Tel. Co., 176 F.3d 359, 363 (6th Cir. 1999). Although none of the above factors is dispositive, a

district court may dismiss a case where "a clear record of delay or contumacious conduct" exists. Id. Upon review of the entire record in this case and considering the parties submissions in light of the factors described above in Knoll, the Court DENIES Defendant's motion to dismiss.

The Defendant alternatively moves to compel Plaintiff's deposition scheduled on April 6, 2005, or on another date before the April 15, 2005, deposition deadline. On April 5, 2005, Defendant filed a Memorandum to the Court in which it consented to staying Plaintiff's April 6, 2005, deposition pending a ruling on the instant motion. Because the Court has granted Plaintiff's Motion to Modify and Enlarge Scheduling Order, the Court DENIES the motion to compel as moot. (Order Granting Pl.'s Mot. to Modify and Enlarge Sched. Order, May 5, 2005.)

So ORDERED this 6th day of May, 2005.

A handwritten signature in black ink, appearing to read "Jon P. McCalla", is written over a horizontal line. A large, loopy circular flourish extends from the bottom of the signature line.

JON P. McCALLA  
UNITED STATES DISTRICT JUDGE



## Notice of Distribution

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Honorable Jon McCalla  
US DISTRICT COURT